

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,864
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her eligibility for Vermont Health Access Plan (VHAP) benefits. The issue is whether the petitioner received adequate notice that failure to pay her \$20 program fee in a timely manner would lead to her termination from the program.

FINDINGS OF FACT

1. The petitioner lives with her two minor children. Since November, 1998, her children have received medical coverage under the Department's Dr. Dynasaur program. The petitioner was covered under VHAP through the end of March, 1999, through enrollment in a managed care program.

2. According to the Department's representations at the hearing, it contracts with the Vermont National Bank (VNB) to administer certain aspects of its VHAP managed care programs. Recipients of VHAP are assessed a modest "program fee" based on their income. The petitioner's fee was \$20 semiannually.

3. The Department alleges that VNB sent the petitioner a notice dated December 3, 1998, informing the petitioner that her program fee had not been paid and

setting a deadline by which it had to be paid or she would be terminated from the program. The Department represents that VNB keeps no record of its notices, and the Department is apparently unable to provide the Board with any specifics as to the content of the notice, other than the representation that there has never been a problem brought to the Department's attention regarding VNB's services in this regard.

4. The Department further alleges that VNB sent a follow up notice to the petitioner on December 18, 1998. But again, the Department cannot provide a copy of the notice and can only represent what it thinks the notice said and when it was sent.

5. The petitioner represented that she has a vague recollection of receiving some notice regarding a program fee, but she alleges she did not understand that her benefits were in jeopardy if she failed to pay the program fee. Subsequent events, described below, only added to the petitioner's confusion.

6. On December 17, 1998, the Department's VHAP unit (not VNB) sent the petitioner a notice asking for verification of her recent employment and asking the petitioner to contact them in this regard by December 28, 1998.

7. It appears that the petitioner did not contact VHAP by the date given. On December 30, VHAP sent the

petitioner a notice stating that her children would be terminated from Dr. Dynasaur as of January 31, 1999, because "you have not provided information necessary to determine your eligibility". The notice advised the petitioner that "you may reapply at any time".

8. The parties agree that on January 19, 1999 the petitioner filed a new application for medical coverage for her children and herself. On January 20, 1999, the VHAP unit sent the petitioner a notice stating that coverage for her children under Dr. Dynasaur would begin February 1, 1999, and that coverage for her under VHAP would also begin on February 1, 1999.

9. Regarding the petitioner's VHAP coverage, the notice included the following:

. . . The Vermont AIM card (green card) you received in the past will still be your ID card. . . .

A six-month program fee of up to \$25 per person may be required depending on household income. If a program fee is required, you will receive a bill with payment instructions. If we do not receive a required program fee within 10 days of the billing date, VHAP eligibility will end. . . .

10. The very next day, January 21, 1999, the VHAP unit sent the petitioner another notice stating that her VHAP would close January 31, 1999, because "VHAP program fee has not been received".

11. The petitioner subsequently discovered that her VHAP had, indeed, been closed as of January 31, 1999. She maintains that she spoke with someone at the Department and

was advised to file yet another application for VHAP, which the Department received on February 25, 1999. The Department granted this application effective that same date. The next day, the Department received the petitioner's program fee for the period December, 1998, through May, 1999.

12. Unfortunately, the petitioner incurred a medical expense of about \$100 for services she received sometime between February 1 and February 25, 1999, while her VHAP was closed. This closed period is the issue in this fair hearing.

13. Based on the notices sent to the petitioner, at least the ones that the Department can verify (see supra), it is found that a person could reasonably assume that she was eligible for VHAP beginning February 1, 1999, based on her most recent application, and that it was only her coverage under her previous application that was being terminated as of January 31, 1999.

ORDER

The Department's decision closing the petitioner's VHAP coverage from February 1 through 24, 1999, is reversed.

REASONS

Section 4001.91 of the VHAP regulations includes the following provisions:

An individual who fails to pay a required fee within 30 days of the initial determination of eligibility. . .will have his/her application denied. An individual who is dropped from the program before the end of the six-month period and reapplies shall have a new program fee requirement. . . .

In this case, the Department notified the petitioner on January 20, 1999, that she was eligible for VHAP based on an application she had filed on January 19, 1999. Under the above regulation, the program fee for this application was not due until February 19, 1999. The petitioner never received any notice that her VHAP based on this application would be terminated. In the confusion, the petitioner filed yet another application for benefits on February 25, 1999, and she paid her program fee on February 26, 1999, which the Department determined covered the period of December, 1998, through May, 1999.

Under the above circumstances, the petitioner could have reasonably assumed that the notice of termination dated January 21, 1999, which she received one day after being granted on her new application, would only have referred to her previous period of VHAP coverage, and that the coverage under her new application would take effect the day that coverage under her previous application was ending.

The above analysis is based on a plain and fair reading of the notices the Department could establish that the petitioner did receive. However, the Department's burden of proof in this matter includes establishing that the notices

sent by VNB to the petitioner in December, 1998 (assuming they were sent at all) contained fair warning to the petitioner of the consequences of failing to pay her program fee in a timely manner. As noted above, the Department has no reliable record that these notices were ever sent, much less that their contents fairly and accurately apprised the petitioner of what was expected of her. Therefore, the Department's decision to terminate the petitioner's benefits based on her alleged receipt of these notices would have to be reversed on this basis alone.

If this case is typical of the Department's application and notice procedures for the VHAP program it is clear that there are some serious problems that must be addressed if the Department is ever to establish that recipients have received adequate notice of adverse decisions under VHAP. In this case, it is concluded that the notices that the VHAP unit sent to the petitioner (attached hereto) establish her eligibility for a new period of benefits effective February 1, 1999. Even if it could be concluded that she received adequate notice of the termination of her prior period of eligibility, inasmuch as this previous period of eligibility did not terminate until January 31, 1999, there can be no loss of benefits to the petitioner, especially now that her program fee covering the period in question has been paid in full. Based on the foregoing, the Department's decision is reversed, and the petitioner's coverage shall be reinstated

retroactively for the period in question.

#